

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
SAN ANTONIO DIVISION

UNITED STATES OF AMERICA,

v.

Debra R. Gutierrez,
Defendant.

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Crim. No. 07-M-337(1) NSN

ORDER REGARDING RESTITUTION

The matter before the Court is the determination of restitution.

The controlling statute is 18 U.S.C. §3663A(b)(1)(B), which provides that if the return of the subject property is impossible, impracticable, or inadequate, restitution is the amount which is:

- (i) the greater of-
 - (I) the value of the property on the date of the damage, loss, or destruction; or
 - (II) the value of the property on the date of sentencing, less
- (ii) the value (as of the date the property is returned) of any part of the property that is returned.

The testimony in this case was that the stolen MP3 player was used but operable, that Mr. Lozano-Garcia paid \$125 for it, and that the value of the player was \$250. A quick search of on-line resources (E-bay and Amazon) suggests that Mr. Lozano-Garcia could buy a replacement brown Zune for \$165.00 or less. No evidence was presented as to the cost of uploading the music which was stored on the stolen Zune to a replacement player. Typically, that music is stored on a computer from which it may be copied easily to a new player, involving minimal time.

Accordingly, the judgment in this case will direct payment of restitution of \$165.00.

It is so ORDERED.

SIGNED on January 16, 2008.



NANCY STEIN NOWAK
UNITED STATES MAGISTRATE JUDGE